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TAGS: IZ KU PGOV PREL
SUBJECT: CHAPTER VII: NEGOTIATION OF U.S. VICTIM CLAIMS
SETTLEMENT AGREEMENT

REF: SECSTATE 105413

Classified By: Acting Deputy Chief of Mission Gary A. Grappo for reason
1.4 (b) and (d).

¶1. (C) Summary: On July 16 and 17, 2009 PM Maliki, s top legal and political advisers and U.S. representatives from the Department of State, Department of Justice, Department of Defense, and Department of Treasury reached preliminary agreement on a draft state-to-state claims settlement text for resolving both known and unknown Saddam-era claims of U.S. victims, most of which are asserted by individuals who were held as human shields or tortured during the 1990 Gulf War as POWs. On October 12, PM Legal Advisor Dr. Fadel Jawad Kadhum provided a proposed revision to the draft text that includes language he asserted would ensure Council of Representatives (COR) approval, but would not commit the United States to do anything more than &study8 any claims submitted by Iraq to the USG pursuant to the agreement, including a revision to Article V-(2) concerning a preservation of Iraq, s right to submit claims on behalf of the Iraqi government and Iraqi nationals to the United States and establishing a joint commission to address any such claims. Dr. Fadel asserted this language would help secure parliamentary approval, but would not commit the United States to resolve claims submitted to the USG pursuant to the agreement. The Embassy recommends that, in order to finalize agreement before the March 7 national parliamentary election, the Department engage with interagency counterparts as soon as possible to approve the proposed revisions to Article V-(2) as amended to exclude the bracketed language. End summary.

PROPOSED CHANGES TO CONSIDER IRAQI CLAIMS

¶2. (C) On October 12, 2009 PM Legal Advisor Dr. Fadel Jawad Kadhum provided a proposed revision to the draft text to Embassy Legal Adviser. Article V-(2) of that draft contains the following proposal for consideration of potential Iraqi claims against the United States:

The Government of Iraq retains the right to present its claims and the claims of its agencies and instrumentalities, and Iraqi nationals (legal and physical) to the Government of the United States. For this purpose, the Parties shall establish a joint commission to study the claims (and decide the amount of compensation to be paid to the victims). (NOTE: The language of Article V-(2), as developed in the July negotiations, provides: &Iraq retains the right to present claims of natural and juridical Iraqi nationals to the United States.8 END NOTE)

¶3. (C) Dr. Fadel advised Embassy and State Department legal advisers on several subsequent occasions that the language developed in July does not sufficiently address Iraqi claims, and that the agreement is thus unlikely to be approved by the Council of Representatives (COR). He further stated that his proposed language would help ensure

COR approval, but would not commit the United States to pay claims submitted to the USG pursuant to the agreement. He reiterated this view to Embassy Legal Advisers and NSC Director Peter Vrooman on December 10, to Deputy Embassy Legal Adviser on December 22, and to L/AN Attorney Advisor Jeremy Sharpe at the Diplomatic Joint Coordination Committee inaugural meeting on January 24. Fadel preferred that the United States agree to the full proposed text for Article V-(2), but indicated it would be acceptable to remove the bracketed language regarding the determination of compensation. He believes that the establishment of a mechanism to &study8 claims would satisfy the COR. Per discussions with Dr. Fadel, Article V-(2) is the last outstanding issue to be resolved before the draft agreement could be submitted to the Council of Ministers (COM) for approval.

POLITICAL UNCERTAINTY MAY CHALLENGE PROGRESS ON CLAIMS

¶4. (C) U.S. claimants and Congress continue to seek prompt compensation from Iraq through a government-to-government settlement. If diplomatic progress toward resolving the high profile cases stalls, the claimants, Congressional supporters appear ready to introduce legislation to address the claims, including by permitting the victims to return these claims to U.S. courts.

¶5. (C) The current Iraqi parliament is set to terminate on March 15. During the transition to a new Iraqi government, the powers of the executive likely will be curtailed and the Council of Ministers (COM) will limit its functions to those commensurate with a typical caretaker

government. The caretaker COM may not be empowered to approve the agreement. Thus, if COM approval is not secured prior to March 15, the agreement's conclusion may be delayed by a lengthy government formation period until the new COM is seated. Likely delays with securing COM approval prior to March 15, and the political uncertainties of how the new Iraqi government will view the U.S. victims claims agreement and how amenable it will be to working with the USG on the issue, may hinder the ability to make substantive progress on resolving claims.

EMBASSY RECOMMENDATION

¶6. (C) The Embassy recommends that the Department engage with interagency counterparts as soon as possible to approve the proposed revisions to Article V-(2) as amended to exclude the bracketed language. The Embassy assesses that including the amended Article V-(2) language would aid in securing COM approval and COR ratification of the agreement without committing the United States to resolve any potential claims asserted under that provision, and without cementing any particular process for their consideration. Closing off this outstanding issue also may encourage the GOI to deliver a long awaited counter proposal to the U.S. proposed settlement amount.